Filed 12/8/16 In re E.P. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.P., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.P., Defendant and Appellant.	E065687 (Super.Ct.No. J263969) OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes, Judge. Affirmed.

Clare M. Lemon, by appointment of the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Adam E. Ebright, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency proceeding, the father appeals from the dispositional order denying him reunification services. He contends that the juvenile court erred by failing to consider whether providing reunification services to him while he was incarcerated would be detrimental to the child.

As we will hold, the juvenile court did consider whether services would be detrimental. Moreover, it expressly found that services would be detrimental. And moreover, this finding was supported by substantial evidence. Hence, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

R.P. (father) and A.A. (mother) are the parents of E.P. (sometimes child). They were married when E.P. was conceived; the juvenile court found that the father was E.P.'s presumed father. However, they separated some time in 2015. Eventually, the mother filed for divorce.

In January 2016, when E.P. was born, both he and the mother tested positive for amphetamines. The mother admitted that she had had a substance abuse problem for at least eight years and that she used drugs during her pregnancy.

The mother had three older children. One had been the subject of a previous dependency, which had ended in that child being returned to the mother; the other two were in the care of relatives. The father was incarcerated.

Accordingly, San Bernardino County Children and Family Services (CFS) detained E.P. and filed a dependency petition regarding him. He was placed at first with the mother's mother, and then later with a foster parent.

CFS discovered that the father was a gang member. It also discovered that he had a criminal history starting when he was a juvenile and including the following adult convictions:

2006: Aggravated assault (Pen. Code, § 245, subd. (a)(1)).

2012: Recklessly evading a peace officer (Veh. Code, § 2800.2, subd. (a)).

2012: Aggravated assault.

In addition, he had arrests in 1999 for assault with a firearm (Pen. Code, § 245, subd. (a)(2)) and in 2003 for possession of a controlled substance for sale (Health & Saf. Code, § 11378); while his rap sheet did not specify the disposition of these charges, they were followed by either probation revocations or parole violations, strongly suggesting that they resulted in convictions.

CFS tried to provide the mother with services, but she did not contact the social worker.

In its original jurisdictional/dispositional report, CFS recommended that the father be provided with reunification services. In March 2016, however, the father pleaded guilty to possession of a controlled substance for sale (Health & Saf. Code, § 11378) and was sentenced to two years in jail, with 140 days of credit for time served. Thereafter,

CFS filed an addendum report recommending "no reunification services . . . pursuant to WIC 361.5(e)(1)."

In March 2016, at the jurisdictional/dispositional hearing, the juvenile court found jurisdiction based on failure to protect, as to both parents (Welf. & Inst. Code, § 300, subd. (b)); failure to support, as to the father only (*id.*, subd. (g)); and abuse of a sibling, as to the mother only (*id.*, subd. (j)). It formally removed the child from the parents' custody.

Counsel for the father requested reunification services. After some discussion, the parties agreed that the father's earliest possible release date, provided he received all possible conduct credit, was October 29, 2016.

Counsel for CFS opposed the request; he argued that even if the father were released on October 29, 2016, that would be beyond the six-month limit on reunification services for a child under three. (See Welf. & Inst. Code, § 361.5, subd. (a)(1)(B).)

Initially, the juvenile court was inclined to order reunification services for the father. For example, it stated, "I think it might be appropriate to get him services, if there is an outdate." It acknowledged that services were available at the jail where he was housed.

After hearing argument, however, the juvenile court decided to deny reunification services to the father. It stated: "I'm looking at the child's age. The child is just one month old. I think it would be appropriate to deny services to [the father] in the current situation that he is in. And upon release, he can request that services be granted." It

made a finding that reunification services to the father would be detrimental. It granted reunification services to the mother.

II

THE JUVENILE COURT PROPERLY FOUND THAT

REUNIFICATION SERVICES WOULD BE DETRIMENTAL

"[P]arents of dependent children generally are entitled to reunification services 'aimed at assisting the parent in overcoming the problems that led to the child's removal.' [Citations.]" (*V.C. v. Superior Court* (2010) 188 Cal.App.4th 521, 527.)

Reunification services for incarcerated parents are governed by Welfare and Institutions Code section 361.5, subdivision (e)(1), which provides: "If the parent . . . is incarcerated, . . . the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child."

It further provides: "[T]he court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, . . . the nature of the crime . . . , the degree of detriment to the child if services are not offered . . . , *the likelihood of the parent's discharge from incarceration . . . within the reunification time limitations . . .* , and any other appropriate factors." (Italics added.)

We review a finding that reunification services would be detrimental under the substantial evidence standard of review. (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 18-19; cf. *In re D.B.* (2013) 217 Cal.App.4th 1080, 1092 ["orders regarding the bypass provisions of [Welfare and Institutions Code] section 361.5,

subdivision (b) are reviewed for substantial evidence."].) Under this standard, "we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citations.]" (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366.)

The father claims that the juvenile court failed to consider detriment. He notes that it did not use "the word 'detriment,' or any variation thereof," at the hearing. However, it did discuss the likelihood of the father's discharge from incarceration within the reunification time limitations, the age of the child, and the availability of services, all of which were factors relevant to detriment. Moreover, the report for the hearing included a list of recommended findings, including a finding that reunification services would be detrimental, and the juvenile court expressly adopted those findings. Thus, the record affirmatively shows that it made a finding of detriment.

The father also claims that the juvenile court considered only one of the relevant factors, namely, his likelihood of being released during the reunification period. Not so. As already mentioned, it discussed two additional factors on the record. We may presume that it considered all of the other factors but found they would not change the outcome. (*In re Steven A.* (1993) 15 Cal.App.4th 754, 765.)

Next, the father argues that the juvenile court failed to explain how his likelihood of being released during the reunification period led to its finding of detriment. He relies on *In re Kevin N.* (2007) 148 Cal.App.4th 1339. There, the juvenile court denied reunification services to the then-incarcerated father, finding "that only six months

services were authorized, 'and applying that time line, it would certainly be futile to provide the services because father can't have the children back because he is still in custody.'" (*Id*. at p. 1342) The appellate court reversed, for two reasons. First, the juvenile court misread the law — the reunification period for the two oldest siblings was not necessarily limited to six months. (*Id*. at pp. 1343-1344.) Second, the juvenile court erred by failing to consider whether reunification services would be detrimental. (*Id*. at pp. 1344-1345.) "It found services would be futile . . . . But that is not the same as finding services would be *detrimental* to the children." (*Id*. at p. 1344.)

Kevin N. is distinguishable because here, it is undisputed that the reunification period was limited to six months. Also, here, the juvenile court made an express finding of detriment. Futility may not be the same thing as detriment, but we can infer detriment from futility. When the "provision of such services has little or no likelihood of success and thus only serves to delay stability for the child, . . . providing services to the incarcerated parent [may] be detrimental to the child." (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2016) § 2.129[3][b] at p. 2-475; accord, *Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1030-1031.) The Legislature *required* the juvenile court to consider the likelihood that a parent will be incarcerated beyond the reunification period, and the Legislature was not just being obtuse.

Finally, the father argues that other factors militated in favor of granting reunification services: The mother was granted reunification services; there was a possibility that the child would be returned to the mother's custody; services were

available at the jail that the father was in; the father had helped to raise one of E.P.'s half siblings; and the father's release date was only shortly after the end of the reunification period. This argument implicitly invokes a standard of review more like abuse of discretion than substantial evidence; it asks us not only to determine which factors are supported by substantial evidence, but to reweigh those factors and to decide what conclusion to draw from them. We must decline to do so.

If only out of an excess of caution, however, we note that, in our view, the juvenile court's decision was not unreasonable or even unwise. While the juvenile court did order reunification services for the mother, so far she was not cooperating. And even assuming the mother could reunify with E.P. before the end of the reunification period and thus could recover custody, the father would have to reunify and recover custody, if at all, on his own. His criminal record and his incarceration presented formidable obstacles to reunification. He had never bonded with E.P., who had been removed at birth. Thus, the juvenile court could reasonably conclude that offering services to the father would most likely only delay stability for E.P. And conversely, it could also reasonably conclude that *denying* services to the father would *not* be detrimental to E.P.

III

DISPOSITION

The order appealed from is affirmed.

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RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.